



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20003

SPECIAL

June 20, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice (Jack Perkins, 633-2113)
Central Intelligence Agency
National Security Council

SUBJECT: DOD proposed report on H.R. 5866, the "Federal Polygraph Limitation and Anti-Censorship Act of 1984."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than noon Thursday, June 21, 1984. Committee is marking up H.R. 5688 on Friday, 6/22.

Questions should be referred to Russell Neely (395-4800) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

Naomi R. Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

TO: Wida Schreiber, OMB
FROM: W. Windus, DOD
Page 1 of 3
For Clearance

Honorable Patricia Schroeder
Chairwoman, Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

6-2-84 per DOD:
Mark up of HR 5866 on
Friday 6/22
Schroeder Winda's Expression of DOD's view

Dear Madame Chairwoman:

As you may recall, I appeared before the Subcommittee on 29 February 1984, to provide testimony regarding a bill, H.R. 4681, proposed by Congressman Jack Brooks, relating to use of the polygraph and prepublication review agreements and indicated that the Department of Defense (DoD) opposed enactment of the subject legislation on the basis that it would prevent the Department from utilizing the polygraph and prepublication review agreements in ways in which they have been and are successfully being employed, as well as preclude any future use.

The Department has obtained and reviewed proposed legislation currently being considered by the Subcommittee in this area, H.R. 5866, and wishes to advise that the position taken and comments made with respect to H.R. 4681 are also applicable to this particular legislation. To be more specific, the polygraph is currently used in DoD for several purposes not recognized by the draft bill: first to resolve derogatory information developed in a background investigation that can't be resolved in any other way; second, to ensure that intelligence sources are bona fide; third, for exculpatory purposes; and fourth, for counterintelligence investigations where evidence of criminal conduct may not be present.

Moreover, the bill would preclude any future use of the polygraph, regardless of how limited, as a means of assessing civilian employees for access to highly sensitive classified information. This would prevent Defense or any other agency of the government from implementing the limited sort of program that Defense has had under consideration for the last two years.

As you know, the Defense proposal would authorize use of a limited polygraph examination comprised solely of questions to determine whether an individual

is a spy for a hostile intelligence service prior to granting that individual access to the most sensitive classified information held by the Department. Under this concept, heads of Defense components, with the approval of my office could, if they saw fit, establish this limited examination, excluding any questions of a personal nature, as a condition of access to information protected within the so-called special access programs authorized by Executive Order 12356.

Under the proposal, no action could be taken on the basis of a person's reaction as reflected on the polygraph charts, unless additional investigation produced derogatory information concerning the individual involved, which, in and of itself, required action. Exceptions to this rule would have to be approved by the Secretary or Deputy Secretary of Defense or one of the three Secretaries of the military departments.

Furthermore, refusals to take such examinations could not be the basis for firing an employee. Any current employee who refused to take an examination as a condition of obtaining access would either remain in the job or be placed in a position of equal grade or pay within the Department.

Additionally, attention is invited to that fact that in developing the proposal, every effort has been made to limit the effect of the proposed use of the polygraph in terms of who may be subject to it, the kind of questions that may be asked, and its effect on a particular individual. In the latter regard, we have provided as many safeguards for the entire process as we can devise to ensure that our employees are treated fairly, and their rights and privacy protected.

The fact that our adversaries efforts to penetrate the defense and intelligence establishments continue unabated and, regrettably, have often been successful, and the subsequent adverse effect on the United States and its allies, cannot be ignored. Consequently, it is believed unwise to foreclose, as H.R. 5866 would do, one available means of coping with this insidious threat.

With regard to prepublication agreements, H.R. 5866 would have the effect

of prohibiting the use of agreement with prepublication review requirements except at NSA and CIA, and would rescind any such agreements other than those already in effect. As indicated in my testimony on H.R. 4681, the existence of a non-disclosure agreement or contract does provide the government with a remedy, a civil cause of action, sanctioned by the Supreme Court in the Snapp case, that it otherwise would not have. Moreover, the review process in effect for some time at CIA and NSA has, in effect, succeeded in preventing a considerable amount of classified information from being exposed to the public. It is believed, therefore, that the benefits justify the establishment of the prepublication review requirement and the imposition of a lasting, albeit limited, very limited, obligation on former employees who have had access to extremely sensitive classified information.